

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

SOLARTEC, INC.

and

SEKELY INDUSTRIES, INC.

Case Nos. 8-RC-16070

8-RC-16071

A Single Employer

and

**INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA**

Petitioner

**SECOND SUPPLEMENTAL DECISION
AND DIRECTION OF ELECTIONS**

Petitions were filed under Section 9(c) of the National Labor Relations Act, as amended, and two hearings were held before hearing officers of the National Labor Relations Board.

The Board has delegated its authority in this proceeding to the undersigned, pursuant to Section 3(b) of the Act.¹

The following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees employed by the Employer at its Solartec, Inc. facility, located at 250 Pennsylvania Avenue, Salem, Ohio facility, including CAD, janitor,

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Upon the entire record in this proceeding the undersigned finds:

The hearing officers' rulings made at the hearings are free from prejudicial error and are affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction. The labor organization involved claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

construction, machinist, tryout, and quality control employees but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

²

The Employer changed the title of the individuals whose supervisory status is at issue here from "leader" to "supervisor" after the Petitioner filed its petitions. After I issued my original decision, the Employer withdrew the "supervisor" title from some of those same individuals. However, I note that the Employer's most recent brief submitted on November 7, 2006 refers to these individuals as having the title of "supervisor". To limit confusion over the term "supervisor" in connection with the classification of these individuals, I will refer to them as "leaders" throughout this Second Supplemental Decision and Direction of Elections.

All full-time and regular part-time production and maintenance employees employed by the Employer at its Sekely Industries, Inc. facility, located at 250 Pennsylvania Avenue, Salem, Ohio facility, including die construction, tryout, machinist, tool grinder, CAD, welder, tool crib, maintenance, indirect, truck driver, sweeper, inspector and design, and shipping and receiving employees, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

I. PROCEDURAL HISTORY

On February 14, 2001, I issued a Decision and Direction of Elections in this matter. Two issues were addressed in that decision. The first issue concerned whether Sekely and Solartec were a single employer, as contended by the labor organization (Petitioner), or whether they were two employers, as argued by the Employer. Second, my decision addressed the question of whether the “leaders”² at Sekely and Solartec were 2(11) supervisors under the Act as the Employer contended, contrary to the Petitioner’s position.

On March 9, 2001, the Employer filed its Request for Review of the Decision and Direction of Elections challenging my conclusions that Sekely and Solartec were a single employer, and that the leaders at both Sekely and Solartec were employees, not statutory supervisors. On March 28, 2001, the Board denied the Employer’s Request for Review.

On May 29, 2001, the Supreme Court issued its decision in **NLRB v. Kentucky River Community Care, 121 S. Ct. 1861 (2001)**. There, the Court upheld the Board’s rule that the burden of proving Section 2(11) supervisory status rests on the party asserting it. However, the Court rejected the Board’s conclusion that “independent judgment” does not encompass a registered nurse’s use of ordinary professional or technical judgment in directing less-skilled employees as being inconsistent with the plain language of the Act. The Court also left unanswered the question of the interpretation of the Section 2(11) supervisory function of “responsible direction.”

Thereafter, on September 25, 2001, in light of **Kentucky River**, the Employer filed a Motion for Reconsideration of the Board’s Order denying review of the Decision and Direction of Elections.

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Due to changes in the workforce, there was no longer any dispute concerning the supervisory status of the Solartec employees. I accepted the agreement of the Parties that all of the disputed employees were eligible voters and that none of them were 2(11) supervisors at the time of the second hearing.

4 The Board remanded this case to me for “further appropriate action consistent with Oakwood.” Thereafter, I solicited the position of the Parties regarding reopening the record. The Employer took the position that reopening the record was unnecessary. The Union, while recommending reopening, cited no specific facts to justify the expense and further delay resulting from the second reopening of this record.

5 In my Supplemental Decision and Direction of Elections, I relied on testimony taken at the initial hearing to the extent that testimony taken at the re-opened hearing did not establish changes in the duties and/or authority of the leaders. I shall do the same for this Second Supplemental Decision and Direction of Elections.

On November 14, 2001, the Board issued its Supplemental Decision and Order remanding this proceeding to me to reopen the record and to take additional evidence on the issue of whether the Employer’s leaders “assign” and/or “responsibly direct” other employees and on the scope or degree of “independent judgment” used in the exercise of such authority.

The hearing on these issues reopened on January 14, 2002 and closed on February 20, 2002. On August 12, 2002, I issued a Supplemental Decision and Direction of Elections finding the Sekely Small Machine Department leader to be a 2(11) supervisor because of his exercise of discretion in assigning the employees in his department. I also concluded that the Employer had not carried its burden of proving that the Sekely Die Construction Department leaders are supervisors under the Act.³ The Employer filed a Request for Review, which was granted by the Board on October 18, 2002.

On September 28, 2006, in response to the Court’s Kentucky River decision the Board issued Oakwood Healthcare, Inc., 348 NLRB No. 37 (2006), Croft Metals, Inc., 348 NLRB No. 38 (2006) and Golden Crest Healthcare Center, 348 NLRB No. 39 (2006) (collectively, “Oakwood”). In Oakwood, the Board established new definitions of the terms “assign,” “responsibly to direct” and “independent judgment.”⁴ On October 24, 2006, the Acting Regional Director solicited briefs from the Parties regarding the application of that decision to the facts of the instant case. Thereafter, the Employer filed a brief to which I have given due consideration.

I will now analyze, consistent with Oakwood, whether the Sekely Small Machine Department leader and Die Construction Department leaders are 2(11) supervisors.⁵

II. DECISION SUMMARY

Based on these decisions, and on my analysis of the law, I have concluded that facts in this case establish that under Oakwood, the Sekely Small Machine Department leader and Die Construction Department leaders make work assignments that are informed by independent judgment. Therefore, they are supervisors as defined by Section 2(11) of the Act and ineligible to vote in the election.

III. CURRENT BOARD LAW REGARDING 2(11) STATUS

A. Overview

Section 2(11) of the Act defines a supervisor as follows:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet this definition a person need only possess the authority to do one of the specific criteria listed, or the authority to effectively recommend such action. **Ten Broeck Commons**, 320 NLRB 806, 809 (1996). The above definition operates to exclude “straw bosses, lead men, and set-up men” and applies only to those individuals vested with “genuine management prerogatives.” **Chicago Metallic Corp.**, 273 NLRB 1677, 1688-89 (1985), citing **S. Rep. No. 105, 80th Cong., 1st Sess. 4 (1947)**.

The burden of establishing 2(11) status is on the party asserting that a given individual is a supervisor. **Kentucky River Community Care, Inc.**, 532 U.S. 706, 711 (2001). Mere assertions of authority are not sufficient to establish supervisory status. As the Board has stated:

Although ‘[a] supervisor may have potential powers, ... theoretical or paper power will not suffice. Tables of organization and job descriptions do not vest powers.’ **Oil Workers v. NLRB**, 455 F.2d 237, 243 (D.C. Cir. 1971).... Additionally, the evidence must fairly show ‘that the alleged supervisor knew of his authority to exercise’ the supervisory power. **NLRB v. Tio Pepe, Inc.**, 629 F.2d 964, 969 (4th Cir. 1980).

Chevron U.S.A., 309 NLRB 59, 62 (1992) (Alterations in original, some citations omitted). It is also well settled that statements of a conclusive nature, without specific supporting evidence in the record, are insufficient to establish supervisory authority. **Custom Mattress Manufacturing, Inc.**, 327 NLRB 111, 112 (1998) (citing **Sears, Roebuck & Co.**, 304 NLRB 193 (1991)).

B. Supervisory Indicia In Oakwood

1. “Assign”

The Board in **Oakwood** determined that the term “assign” refers to: (1) “the act of designating an employee to a place (such as a location, department, or wing), [(2)] appointing an employee to a time (such as a shift or overtime period), or [(3)] giving significant overall duties, i.e., tasks, to an employee.” **Oakwood** at 4. The Board further explained:

The assignment of an employee to a certain department (e.g., housewares) or to a certain shift (e.g., night) or to certain significant overall tasks (e.g., restocking shelves) would generally qualify as ‘assign’ within our construction. However, choosing the order in which the employee will

perform discrete tasks within those assignments (e.g., restocking toasters before coffeemakers) would not be indicative of exercising the authority to ‘assign’.

Oakwood at 5.

The Board also clarified that a putative supervisor’s ad hoc instruction that an employee perform a discrete task does not constitute “assign.” Rather, “assign” for 2(11) purposes only refers to the putative supervisor’s assignment of significant overall duties or tasks to an employee. **Id.**

After providing the above overall framework for the meaning of the term “assign,” the Board went on to find that the charge nurses at Oakwood Healthcare did engage in “assigning.” The record demonstrated that the Oakwood Healthcare hospital charge nurses matched up nursing personnel to specific patients, while the emergency room charge nurses placed nursing staff in designated regions of the emergency department.

Oakwood at 12-13. The Board considered these placements to fall within the definition of “assign” under the Act. **Id.**

Conversely, in **Croft Metals** and **Golden Crest**, the Board determined that the putative supervisors did not “assign.” The record in **Croft Metals** demonstrated that the “leads” did not prepare work schedules, appoint employees to a department or shift, mandate overtime, or give significant overall job duties to employees. **Croft Metals at 7.** In **Golden Crest**, the record was clear that the charge nurses did not have the authority to require nursing assistants to work overtime or to change their work assignments, and furthermore the Employer expressly forbade the charge nurses from sending nursing assistants home early or placing them to work on another floor of the facility. **Golden Crest at 4-5.** Since the Employer could point to no other evidence that the charge nurses had the authority to “assign,” the Board concluded that the Employer had failed to meet its burden.

2. “Responsibly to Direct”

As the Board notes, when Senator Flanders proposed his amendment to add the supervisory function “responsibly to direct,” he commented: “[The supervisor] is charged with the responsible direction of the men under him. He determines under general orders what job shall be undertaken next and who shall do it. He gives instructions for its proper performance.”

Oakwood at 7 n. 27 citing NLRB, Legislative History of the Labor Management Relations Act of 1947, 1303. “Direction,” the Board stated, may encompass ad hoc instructions to perform discrete tasks in a way that “assign” does not. **Oakwood at 6.** While the foregoing descriptions provide some insight into the meaning of the phrase, the Board noted that few Board decisions have undertaken the task of defining its parameters. **Oakwood at 7.** Seeking further guidance, the Board looked to the decisions of a number of United States Circuit Courts which had determined that the term “responsibly” connoted some measure of accountability on the part of the supervisor for the work of the men under him. In accepting this premise, the Board stated:

...to establish accountability for purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor authority to

direct the work and the authority to take corrective action, if necessary. It also must be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.

Id.

Applying the above definition to the Oakwood Healthcare facility, the Board concluded that the evidence did not support a finding that any of the charge nurses engaged in the responsible direction of nursing staff. The Board so found because in the first instance, there was no evidence that the nurses had the authority to take corrective action if staff failed to properly carry out their duties. **Oakwood at 12.** Furthermore, the Board pointed to a complete lack of evidence that any charge nurse had been disciplined or subjected to lower evaluations when her staff failed to perform as required. **Id.**

Turning to **Croft Metals**, the Board found that the leads responsibly directed the employees under them because they instructed employees how to perform their jobs, decided in what order work should be performed, rotated employees among different tasks to meet shipping needs (an example of an “ad hoc” instruction that does not qualify as “assigning”), and on occasion were disciplined for their crews’ failure to meet production goals. **Croft Metals at 8.**

Lastly, the Board held in **Golden Crest** that the charge nurses at issue directed employees in that they instructed them to undertake certain actions (such as cutting a resident’s toenails), and corrected nursing assistants when they were not providing proper care. **Golden Crest at 6.** However, because there was no evidence that any charge nurse experienced any adverse employment consequences as a result of inadequately directing the above tasks, the Board concluded that the employer had not shown that the direction was responsible. **Golden Crest at 6-7.** Accordingly, the Board concluded that the charge nurses were not 2(11) supervisors.

3. “Independent Judgment”

In rejecting the Board’s definition of independent judgment, the Supreme Court in **Kentucky River** observed that it is the degree of discretion rather than the kind of discretion exercised – whether professional, technical, or otherwise – that determines whether the authority is being exercised using independent judgment. **Kentucky River at 714.** The Court left it to the Board to decide the degree of discretion that would be required to support a finding that a given individual uses independent judgment.

In **Oakwood**, the Board approached this issue by concluding that evidence of independent judgment must establish that the putative supervisor is making decisions “free of the control of others” and is forming “an opinion or evaluation by discerning and comparing data.” **Oakwood at 9.** The Board found that an individual’s judgment is not “independent” where his or her actions in carrying out supervisory functions are constrained by detailed instructions from the employer or the provisions of a collective bargaining agreement. **Oakwood at 10.**

The Board concluded that the statute itself answered the question about the requisite amount of discretion that is required for an individual to be deemed a supervisor. The actions undertaken by the putative supervisor must rise above the “merely routine or clerical.”

At the time of both the first and second hearings, Jeff Foster was a Small Machine leader on first shift. Rich Boyle was the second shift Small Machine Department leader at the time of the first hearing. By the time of the second hearing, Sekely had done away with the second shift leader position, Boyle had gone back to being a die maker, and Foster was the only leader in the department. The Employer's November 7, 2006 brief indicates that Boyle has now replaced Foster as the leader in the Small Machine Department. Foster testified at both the first and second hearings. Since there is no indication that Boyle's job responsibilities are different than those of Foster, I will refer to and rely on Foster's testimony in this Decision.

Oakwood at 10. For example, where the asserted supervisor's assignments simply equalize workloads between workers, even if the assignments are made free of the control of others and undertaken after an evaluation of the situation, the assignments are of a merely routine or clerical nature.

Having previously determined that the Oakwood Healthcare hospital and emergency room charge nurses "assigned" nursing personnel to patients and areas of the emergency room, respectively, the **Oakwood** Board used the above analysis and found that in making their assignments, the hospital charge nurses compared the skills of the available nursing personnel in matching them with patient conditions. **Oakwood at 13-16.** The hospital charge nurses made these decisions without consulting higher authority, nor had the employer provided the hospital charge nurses with written or oral instructions that removed the hospital charge nurses discretion in making assignments. **Oakwood at 16.** Accordingly, the Board found that the hospital charge nurses used independent judgment in assigning nursing personnel.

On the other hand, the Board determined that the emergency room charge nurses did not employ independent judgment in making their assignments of nursing personnel to different areas of the emergency room. **Oakwood at 17.** In the emergency room, charge nurses made assignments without assessing patient acuity or nursing skills, simply placing employees in different areas of the department. **Id.** As a consequence, these assignments, although made independently, failed to rise above the routine or clerical.

The Board also found the "leads" in **Croft Metals** did not use independent judgment in responsibly directing the employees under them. The limited evidence in the record suggested that the leads followed standard practices and employer orders in directing employees to do such activities as loading trucks. **Croft Metals at 8.** Thus, the direction was not informed by independent judgment.

Because the Board found that the charge nurses in **Golden Crest** did not assign or responsibly direct employees, it was unnecessary to proceed with any analysis of whether the charge nurses used independent judgment. **Golden Crest at 7 n. 14.**

IV. APPLICATION OF OAKWOOD TO THE FACTS OF THIS CASE

A. Small Machine Department Leader

Turning first to the Sekely Small Machine Department leader Rich Boyle,⁶ I find that he is a 2(11) supervisor, and therefore ineligible to participate in the election. The facts below establish that under **Oakwood**, Boyle makes assignments that are informed by independent judgment.

The Small Machine Department consists of nine employees in addition to Boyle. Four of the employees are primarily engaged in creating computer programs for the operation of machines. The five other employees run various machines and other equipment. Four of the employees are machinists, and five are die makers.

Boyle reports to the Plant Manager Dave Herbert. Although Herbert sets the calendar priorities, based on customer due dates, Foster testified that Herbert does not have the technical competence to supervise the employees in the Small Machine Department.

The record indicates that the four programmers in this department would have no supervision if Boyle is not their supervisor. Boyle makes all the work assignments for the programmers. When Boyle goes on vacation, he leaves a "line-up" for the senior programmer that lists the assignments they need to do while he is away. When Boyle is not present, the senior programmer will make decisions for the other programmers.

Foster's testimony at the first hearing revealed that all the employees are capable of running all the machines in the department, although some employees are better than others on certain machines. When Foster gets a new job in his department, he decides which employee will do the job. Moreover, Foster determines on what machine a particular job will be run. When his employees are low on work, Foster decides who to send temporarily to the Die Construction Department. According to Foster, he does not check with any admitted supervisors in making these determinations, nor have any supervisors questioned Foster regarding who he has assigned to a particular job or machine. No employee has ever refused Foster's job assignments.

During the first hearing, Foster answered questions about a particular job and why he selected a certain employee to work on it. Foster indicated that he chose the employee because the job in question required the cutting of sharp angles and the employee he selected was "patient, meticulous, and accurate on the things he does. And that's what's required to set up the job so we could cut it." In response to questions by the Hearing Officer at the second hearing, Foster similarly testified that he assigned one of his crew members earlier that week to do a job on a particular machine and that he chose the employee because "he is very precise in his work and that was what was required of that particular job."

Foster also testified at the second hearing that he has two employees who work well under pressure, and that he has chosen them over other employees in his department on this basis when the department has had a "hot job" that needs to get done quickly.

Foster indicated that he gives specific instructions to the employees in his department as to how to go about completing a job he has assigned to them. He gives this instruction at the time he initially assigns the job. Foster also corrects the unsafe work practices of his crew members. In neither hearing did Foster indicate that the Employer had disciplined him in any way for his crew's failure to complete a task as expected.

Based on the foregoing, with regard to whether Boyle engages in the "responsible direction" of Small Machines Department employees, I find that while the record establishes that

⁷ While the Employer in its most recent brief points to the Parties' joint stipulation that the Small Machine Department leader effectively recommends promotions, in light of my decision that Boyle is a 2(11) supervisor based on the assignments he makes, I find it unnecessary to address or rely on this portion of the stipulation.

Boyle "directs" employees as to how to go about completing a given task, and acts to correct employees' unsafe work habits, there is no evidence that the Employer has ever taken any adverse employment action against him on account of the unsatisfactory work of his crew. Nor has the Employer demonstrated a prospect of adverse employment action if Boyle fails to properly direct his employees. Consequently, Boyle does not responsibly direct the employees.

However, the record does support a finding that Boyle "assigns" as Oakwood defines this term. The facts demonstrate that Boyle gives significant overall tasks to employees in his department. In addition, Boyle makes these assignments using independent judgment because he evaluates the skill set of his crew members when matching them up with particular jobs and machines. In effect, this is the industrial plant equivalent of the hospital charge nurses in Oakwood who compared the abilities of nursing personnel in assigning them to particular patients. The record is also clear that Boyle makes these decisions without guidance or input from the Employer. Therefore, I conclude that Boyle is a supervisor as defined by Section 2(11) of the Act, and ineligible to vote in the election.⁷

B. Die Construction Department Leaders

There is a more extensive factual record with respect to the Sekely Die Construction Department leaders. I have concluded based on all the evidence, that the Die Construction Department leaders assign work to the members of their crews using independent judgment. Therefore, I conclude that they are supervisors as defined by Section 2(11) of the Act and ineligible to vote in the election.

1. "Responsibly to Direct"

Based on the factual record as developed over the course of two hearings, I conclude that while Die Construction leaders "direct" the members of their crews, the Employer has not met its burden to show by a preponderance of the evidence that the Die Construction Department leaders are "accountable" for the work of their crews as that term is defined in Oakwood. As a consequence, I find they do not "responsibly" direct the men under them, and cannot be deemed supervisors on this basis.

Sekely has no policies or general rules regarding die construction. While the same kinds of dies generally follow the same pattern, there are differences in the ways many dies are constructed due to customer specifications. Some leaders, including Steve Scheiben, Rick Wilson and Dave Ketler provide instructions on how to make a die when they initially give the job to a die maker. For example, Wilson testified that when he assigns a job to two die makers he tells them specifically the things they should do to get the die ready, that they should "look for any interference between the two halves," and that they had to "shut height to make sure the die was level." In the case of leader Jesse Rufener, the record revealed that he often gave somewhat detailed instructions when making work assignments. A-level die maker Randy Miller, who worked on Rufener's crew, testified that "if we were in the stack up process he might say, I want

you to take them blocks, drill them, machine them up on that drill press right there.” During the re-opened hearing, in response to a question of whether he gave instructions to employees when he assigned them dies, leader Jim Dattilio said that he would not do so in the case of his more experienced die makers.

The record also establishes that several leaders engage in discussions with their more proficient die makers about how to go about completing a difficult part of a die. At times, this consultation has resulted in a leader changing his mind and agreeing with the die maker on the construction process. However, when the leader and die maker disagree, leaders instruct a die maker to proceed according to the leader’s specifications. On the other hand, one A-level die maker testified that he had disregarded directions from one of his leaders, and the leader had not disciplined him. However, the die maker did not describe the incident(s), nor the frequency with which this occurred.

With regard to the types of jobs leaders provide the men in their bays, leader Wilson testified that he can assign a whole die to most of the employees, but approximately one quarter of them are not competent and he must give task-by-task work. Wilson described these tasks as “little jobs,” such as repair work. No employee has ever refused to do one of these tasks for Wilson. Leader Dattilio also gives task-by-task work to the less experienced crew employees, who cannot create a whole die on their own. Leader Gauding has at times assigned an entire die to a B rate die maker, however, the die is built “under his supervision.” In this regard, the B die maker understands that he is to go to Gauding with any questions he has and, as Gauding indicated during his testimony, “I ... give them the answer and help them carry it on.” Other leaders expect apprentices and less experienced die makers to ask questions of the more experienced die makers with whom the leaders have placed the apprentices or less experienced workers. In this situation, the leaders act as back up in case the more experienced worker is not available to provide specific guidance when the novice encounters a problem.

In addition to providing instructions and answering questions on how to go about working on a die, leaders counsel die makers on appropriate safety. Apprentice, then B-rate die maker Chris Imburgia testified at the first hearing about the safety guidance provided by his former bay leader, Jesse Rufener, as follows:

Q. If – did you ever have occasion where you were doing something that your leader deem – deemed to be unsafe, where he came up and said don’t do it that way, do it another way?

A. Yes.

Q. Could you tell me about that?

A. Oh, I believe it might have been the time with Jesse Rufener, as far as the setup on a drill press. Just, I believe he put his input on another way that would be a little safer, as far as setting, I believe, to drill air holes in a punch.

Tr. at 1636.

Croft Metals found this action to be encompassed by the term “direct” as opposed to “assign.” **Croft Metals** at 7-8.

Although it is not entirely clear how long these temporary transfers last, it appears they are short-lived, involve discrete activities and are similar to the rotation of tasks leaders engage in within their own departments. Thus I conclude that they are the kind of “ad hoc” instruction the **Oakwood** Board deemed to be encompassed by the term “direct” as opposed to “assign,” and my analysis of the temporary transfers proceeds accordingly. I do note, however, that if these interdepartmental employee loans amount to “assignments” under **Oakwood**, this would not affect the outcome of this decision.

Rufener testified that if he saw an employee engage in an unsafe practice he would correct the problem. Leaders Ketler and Scheiben also take immediate action to correct an employee’s unsafe work practices. Ketler monitors employees’ work for mistakes or poor workmanship on a daily basis, and corrects the errors he finds. Supervisor Homer Sanor testified that he expects leaders to correct the unsafe work habits of the employees in their bays.

All the leaders pull employees off jobs on occasion and re-assign them to different tasks within the bay.⁸ For example, leader Scheiben recounted incidents when he took a slow employee off stoning and put a faster employee on the task in order to reduce the excessive number of hours on the die. Ketler also testified about a particular incident when he pulled die maker Mike Smith off job number 11405, which he was working on with another employee, and put him on job 11010, a “hot job.” Ketler moved Smith because Ketler decided that he no longer needed two people working on number 11405. Ketler’s supervisors did not tell him to whom he should assign the 11010 “hot job.” Ketler indicated that he would change employees’ work assignments on a daily basis. Testifying similarly, Dean Gauding stated that if an AA die maker needed some extra assistance on a job “I would take [an apprentice] off a die and have him help out the Double A, then I’d [send] him back.” Both Wilson and leader Bryan Dailey said that it was their decision which employee would drop what they were doing and work on a different die in order to meet a ship date.

Die Construction Department leaders also send die makers and apprentices to other departments for various reasons. If another department needs extra help to complete a “hot job,” an admitted supervisor normally comes to the bay to request employees, and the leader picks which employee(s), if any, will go to the other department needing assistance.⁹ In making this determination, several leaders testified that they consider how busy their crewmembers are and if any can be spared. The record demonstrates that the leaders decide who will go and that they make that decision without input from the requesting supervisor. Thus, although the due dates for dies are set by management and management comes to the Die Construction Department to ask for employees, it is the leaders who decide if a given employee is too busy to be sent to another department. On the other hand, the record also clearly demonstrates that the leaders generally follow a standard practice whenever a die runs into trouble in the Tryout Department. In this case, leaders routinely send the employee who made the die to Tryout to correct the problem.

The foregoing evidence demonstrates that the leaders “direct” their crews in a variety of different ways. Many of the leaders give specific instructions about how to construct a particular die, either at the point of assigning the die or at some time during the process; a number of leaders act to correct the unsafe work habits of their crew; at

least a few leaders give short-term projects as opposed to assigning a whole die to employees whose die-making skills are sub-par;

Initially, I note that in much of the testimony relied on by the Employer it is not clear that the asserted accountability even goes to “direction.” For example, on direct, leader Scheiben stated that it was his responsibility to make sure the scrap was shed off the bolster on a particular customer’s die. Even if Scheiben had been disciplined for his crew’s failure to complete this specification, there is no evidence that he had directed someone to do it or how to go about doing it. However, as I explain more fully below, even if testimony cited by the Employer qualified as “direction,” there is no evidence that the leaders were accountable for the work of their employees.

all leaders instruct employees to move from one task to another to make a ship date, because they are no longer needed on that task, or for some other reason; and leaders decide if they can loan employees to another department, and which employees will be sent.

I now turn to the question of whether the Employer has met its burden to show that this direction is “responsible.”

The Employer points in its brief to the testimony of some of its witnesses as evidence of the leaders’ alleged “accountability,” a factor which the Board requires for a finding of “responsible” direction. As I explain more fully below, the examples the Employer holds out as demonstrating “accountability” either do not meet the **Oakwood** definition of that term, or are conclusionary statements without the specific supporting evidence that is necessary under Board law.¹⁰

Virtually all of the testimony the Employer cites as standing for the proposition that leaders are accountable concerns the interrelated issues of die due dates and allocated hours to complete a die.

Twice a month at hourly progress meetings, the leader and admitted supervisors review the budgeted hours as compared with the actual hours being expended on the construction of a given die. When it appears that a project is going to run over the budgeted hours, the leader to whom the die was given must provide an explanation to management as to the source of the problem. Several leaders testified that it was common to have many “Sekely change hours” for major dies. A “Sekely change hour” is one that cannot be charged to the customer for whom the die is being made. These hours are a loss for the company. Some overages can be charged to the customer, as in the case of customer-initiated changes in design or specifications. The record revealed that few if any dies are finished within the allotted time.

The Employer points to the following testimony of Homer Sanor as support for its assertion that the leaders are accountable:

Q. Is each die construction [leader] one hundred percent accountable to produce his assigned dies on time and on budget?

A. Yes, they are.

Tr. at 329. The Employer’s attorney also questioned several leaders on both direct and cross on the issue of accountability in relation to the budgeted hours for dies. A typical exchange cited by the Employer in its most recent brief is this one with Leader Dattilio:

Q. And it was your job to try to build those two dies within the allotted hours, was it not?

A. Correct.

Tr. at 1149. The Employer relies on one instance where a leader testified that an admitted supervisor had been “upset” with him for excess hours on a die. The above evidence, however, falls short of demonstrating that the leader was “accountable” under the **Oakwood** standard, which requires evidence of at least the prospect of adverse consequences for the leader if the crew fails to complete the work as required.

The Employer’s brief also cites **Oakwood** which in turn cites **NLRB v. Adam & Eve Cosmetics, 567 F.2d 723 (7th Cir. 1977)** for the proposition that in order to show accountability, evidence of “some form of counseling” of the putative supervisor will suffice. **Oakwood** at n.13. In **Adam & Eve**, the putative supervisor was reprimanded by an admitted supervisor for not keeping the warehousemen busy. The Seventh Circuit found that this reprimand reflected the putative supervisor’s authority to direct his crew. In the instant case, there is no evidence that leaders were counseled or reprimanded for their crew’s failure to keep a die within the allocated hours. More importantly, the record here reflects that what the Employer expected of the leader whose die was running over was an explanation of why that was happening. As leader Scheiben explained, whether “it’s an engineering problem or whether it’s a labor problem or a Sekely problem.” Various leaders also testified, like Scheiben, that when the hours were running in excess of those budgeted, it was their responsibility to explain to management the reason why that was occurring, so that the Company could allocate the overages properly. Contrary to the Employer’s assertion, these leader explanations are not evidence of a reprimand; rather, the Employer required this information so it could determine if the customer could be billed for any portion of the overage.

It is only logical that the Employer is not pleased when dies are not completed within the hours originally budgeted, but this displeasure did not appear to cause the Employer to counsel or otherwise punish the leaders.

The record in this case contains additional evidence to support a finding that the leaders are not “accountable.” For example, on re-direct Dattilio testified that in the two to three years he had been attending hourly progress meetings he had never been disciplined for exceeding the number of hours allocated for a particular die assigned to his crew. Similarly, leader Gary Guappone stated that he had never been disciplined when a die assigned to his crew had gone over the allotted hours. Leader Dean Gauding testified that in his seventeen years as a leader, he never knew of any instance where a die construction leader was disciplined or discharged for exceeding the budgeted hours. Die Construction Superintendent Homer Sanor admitted on cross that he had never disciplined leader Rufener for any reason. And leader Bryan Dailey testified that he never knew of anyone being disciplined for his crew going over the hours budgeted for a job. Similarly, there is no evidence that a leader has ever been disciplined for his crew’s failure to make a die due date.

Nor is there evidence of “accountability” in the leaders evaluation forms. Leaders are given their annual reviews on the same evaluation form as are the members of their crew. The

Since I find that the Die Construction Department leaders do not responsibly direct their crews, it is not necessary for me to analyze whether they direct using independent judgment. **Golden Crest at n.14.**

forms do not contain any specific area in which to evaluate a leader on his abilities in directing his crew. Although there are sections on the form entitled “summary narrative,” “training recommendations,” and “reviewer comments” in which such information could be included, numerous witnesses testified that they had never seen any notations in these areas.

In the instant case, the Employer has not shown even a prospect of discipline for the leader whose crew does not carry out its tasks properly. In light of this, and the fact that no adverse employment actions have ever befallen any leader on the basis of his failure to adequately direct his crew, I find that the leaders do not “responsibly” direct the men under them.¹¹

2. Die Construction Department Leaders “Assign”

As mentioned above, die makers follow the same general pattern in creating most dies, although there are sometimes customer-specific requirements that die makers must take into account. The length of time it takes to construct a single die varies, but some dies can take a die maker months to complete. In addition, some dies are less popular to build because they are dirtier and/or require more grinding.

Once Sekely management assigns a die or line of dies to a particular leader, the record reflects that those leaders use a variety of techniques to get the dies completed in their bays. Within their bays, all the leaders engage in, to a greater or lesser degree, various activities that constitute “assigning” under **Oakwood**. The activities can be divided into three general categories: (1) giving jobs to employees; (2) placing apprentices and less-experienced die makers to work with more highly skilled ones; and (3) teaming up two or more employees to work together on multi-person jobs. These acts all involve the giving of significant overall tasks which meets the **Oakwood** definition of “assign.”

While some leaders decide themselves who they will assign a certain die, other leaders engage in a collective decision-making process with the employees regarding die assignment. I will discuss the two styles in turn. Leaders Scheiben, Ketler, Wilson and Rufener all assign die jobs to employees in their bays. Scheiben and Ketler as well as Board witness Wilson testified that they decide which die makers will work on what dies. While Rufener characterized his assignment style as democratic, two die makers who have worked under Rufener along with two admitted supervisors portray Rufener’s leadership as one of the most authoritarian in the plant in terms of work assignments. In light of this, I will briefly review the facts relevant to determine how Rufener’s crew operates with regard to job assignments.

All those who testified on the subject, including Rufener himself, indicated that Rufener never assigned a single employee or employees to build a whole die. Instead, all of the employees in his bay worked on all the dies, and Rufener accomplished this by moving employees from die to die, sometimes from one day to the next. At the first hearing, Rufener’s testimony was that his employees would express a preference for a particular die, and Rufener would let the employees decide who would do what.

However, at the second hearing when asked if it was his practice that employees should come to him for assignments as they

completed an assignment, Rufener's response was that "[i]f they got a completed job, yeah, and they ran out of work or something they would come and ask, I would put them on something else."

One of Rufener's crew members, Randy Miller, also contradicted Rufener's statements as to his democratic style, stating that Rufener never solicited any input as to who would be assigned to what die. And both Miller and another Rufener crew member testified that they both had to go back to Rufener for new assignments once they finished what he had given them to do. Finally, during cross-examination, Rufener admitted that he had to be careful in the assignments he gave a certain employee because the employee was not dependable due to his excessive drinking. Taken as a whole, the facts outlined above lead me to conclude that Rufener "assigned" jobs to the employees in his bay, and did not in fact let his crew decide on which jobs they would work.

In contrast to the work assignment style of Scheiben, Ketler, Wilson and Rufener, leaders Guappone, Dattilio, Dailey and Gauding regularly let die makers determine the jobs they would like to work. Guappone talks to the men in his crew and "they decide[] on their own if they [are] going to build this or that, and I agree[] with them." The record reflects that leaders Dattilio and Dailey use a style of dividing up jobs in their bays that is similar to that of Guappone. In response to questions from the Hearing Officer about his method of assigning work, leader Gauding explained that he usually would take the draw die himself and then give the trim dies to an A or AA die maker. Gauding consults with the A and/or AA die makers to determine who will take a given die.

At times, Guappone, Dattilio, Dailey and Gauding do appear to have assigned jobs to the employee they felt was the most qualified. Dattilio for instance, has assigned one die maker to work on rush jobs because that die maker tends to work faster than other die makers. And Guappone said that after the crew would talk about the new jobs, "sometimes I would assign one person to the job because we knew who, you know, who exactly would do a better job...." In general, however, these leaders allow their die makers to pick their own work, or decide among themselves who will do what.

While in practice some leaders may run their bays in a less authoritarian way than others, the democratic leaders acknowledged that they have the authority to assign jobs to their employees. The following exchange between Gauding and the Employer's attorney illustrates this point:

Q. Was there anything preventing you from simply assigning those dies rather than soliciting their views?

A. I could assign them to them, but –

Q. Sure. Okay. You chose not to operate in that manner, correct?

A. Right.

Q. That was your judgment call and you made it, didn't you?

A. Yes.

Tr. at 3609.

Likewise, during the Employer's cross-examination of leader Guappone, the following dialog occurred:

Q. And why did you give the inner door job to Mr. Salvino rather than giving him the outer door job?

A. Because Mike Getsy requested to have that job.

Q. Okay. And you could either honor Mr. Getsy's request or not honor it, but your policy was to honor it, correct?

A. Yes.

Q. And you decided on that policy because you had the authority to do that, correct?

A. I guess – my authority was also my responsibility and my personal feelings.

Q. Right. So if you – if you elected to operate in a more rather than less democratic fashion, that was your decision, correct?

A. Yes.

Tr. at 1538-1539.

While I might be reluctant to find that the authority to assign exists based solely on this testimony, here the record clearly establishes that half of the leaders who testified do assign jobs to their employees. The more democratic leaders assign jobs to specific employees periodically. Thus, this is not a case of "paper authority" that the Board considers insufficient for a finding of supervisory status. The leaders know they have the authority to simply assign jobs without employee input. They do not mandate assignments but that is because they choose not to do so, and not because they lack the power to do so.

There is also evidence that even the more democratic leaders make other kinds of assignments in their bays. When management assigns a die to a bay, one of the first things that has to be done is an inventory of the parts and components that are needed to build the die. The record establishes that this could mean verifying that over two hundred parts are on hand. In this regard, leader Dailey indicated that it was his call whether he would do this himself or assign this job to his most senior die maker, Paul McCoy. In the case of Dattilio, he has delegated the task of taking the machine parts' inventory to various people on his crew, and at times he has determined that he will do it himself.

Although these crew leaders operate more democratically with regard to many die maker job assignments, this is not the case with apprentices and some inexperienced die makers. Numerous leaders testified that apprentices do not pick the jobs on which they work but rather must go to the leader to receive their assignments. In addition, most leaders assign both apprentices and less-experienced die makers to work with a more skilled die maker. Leaders expect the veteran die maker to provide the novice with instruction and to answer questions. Finally, many leaders assign two or more employees to work together on large projects.

No employee has ever refused a job assignment from any of the leaders who testified at either hearing. Moreover, every admitted supervisor who testified on the issue stated that they left the decision of job assignment to the bay leaders.

I conclude that the Die Construction Department leaders “assign,” within the meaning of **Oakwood**. They also have the authority to assign, even when they choose not to exercise it. All of the leaders make at least one of the following kinds of assignments: giving jobs to employees, placing apprentices and less experienced die makers to work with more experienced die makers, and matching up two or more employees to work on multi-person jobs. All of the above assignments involve the giving of significant overall job duties or tasks that **Oakwood** determined fall within the scope of the statutory term.

3. Die Construction Department Leaders Assign Using “Independent Judgment”

The leaders “assign” when they give jobs to employees, place apprentices and less experienced die makers to work with more experienced die makers, and match up multiple employees to work on large jobs. Each of these assignments involves the use of independent judgment.

Regarding job assignment, leader Wilson testified that in assigning work, “I’ll use my judgment as far as the complexity of the job that needs done or maybe the skills of the job that needs done, try to compare that to the employee.” Scheiben takes into account an employee’s experience and expertise when he assigns work. Leader Gauding often gives A die makers entire dies to build from beginning to end. In the case of the B rate die makers, Gauding has assigned them a whole die to build on their own but does this only if he thinks their skills have reached a certain level. Gauding is able to determine each die maker’s abilities because when a new die maker gets assigned to his bay he has them build a die with him or with a AA die maker and he “watches their work style” so he knows “what they’re capable of.”

Dattilio testified that he has given assignments to one member of his crew based on the employee’s ability to work quickly. Other leaders testified similarly. Dattilio admitted that everybody on his crew has “strong points and weaknesses,” and also that he would never assign the job of constructing a trim die to a particular individual, whom he identified as one of his more poorly-skilled die makers. As I explained above, there are also some die makers whose skills are so deficient that leaders put them on task-by-task projects because the leaders have determined that they are incapable of constructing an entire die.

The die makers’ classifications do not appear to affect what jobs they are assigned. Although die makers progress from being apprentices to B, then A, and finally AA die makers, the level correlates more to years of work than to die-making proficiency. Many leaders could not answer questions put to them by the parties as to whether a given employee in their bay was a B, A, or AA die maker. One leader testified that he had assigned dies to B die makers that he would not assign to certain A die makers. The record is also clear that no leader has ever discussed with an admitted supervisor how he should go about assigning work, and that Sekely has no rules or procedures for leaders to follow regarding job assignments.

There is some evidence that, at times, leaders assign dies in ways that under Oakwood would be deemed routine or clerical. For example, die maker Paul McCoy testified that during the time he was working under Dailey and Dattilio, it was a fairly common practice that when a die maker was finished with a die, he got the next die to be assigned to the bay. Similarly, several leaders testified that they would often try to give an easier job to a die maker who had worked on a more difficult die for his last assignment. This last type of assignment is akin to the “equalization of workloads” that Oakwood found does not rise to the level of independent judgment. Although these routine assignments take place, the record evidence concerning them is scant compared to the more abundant evidence that leaders evaluate the skills of their employees and match those with the jobs assigned to their bays. This is true even in the case of some of the more democratic leaders, as evidenced by some of Dattilio’s testimony. Therefore, I conclude that like the hospital charge nurses in Oakwood who the Board found used independent judgment to assign nurses to patients, these leaders make job assignments by matching the jobs with the abilities of their crew members.

All but two leaders testified that they assign both apprentices and less-experienced die makers to work with a more skilled die maker on a die, and at least one leader testified that he has done this even where the better employee is only a B level die maker. In considering how to make these kinds of assignments, leader Wilson testified that he would

“try and put [the less skilled employee] with somebody who would explain the job to him. I could – there are some die makers that will not really explain why do something, [sic] just give them the task and do it and I tried to pick a, pick an employee who’s going to, would help a guy like Larry, explain to him why he’s doing a certain task.”

Tr. at 3265.

On cross-examination, Dattilio indicated that if he were training an apprentice in his bay he would never assign apprentices to work with a certain die maker who Dattilio had previously described as having poor die making skills. Gauding does not regularly assign an apprentice to work with one particular die maker; as he put it, “I’d usually just put the apprentices with the die makers and they did all the work with them.” When asked whether it was his decision to train apprentices that way Gauding responded that it was. In sum, the above evidence demonstrates that the leaders evaluate which of their die makers are better teachers when they go about assigning less experienced workers with more experienced die makers. I find that this is an exercise of independent judgment. With regard to leaders assigning two or more employees to work together on a multi-person project, leaders indicate that they look at a number of variables. For example, Dattilio generally assigns a particular member of his crew to work alone and stated that he does this because the employee tends to be reckless and also holds up other employees assigned to work with him from doing their jobs. Dattilio stated that the employee also told him that he enjoyed working alone, although Dattilio did not indicate that this preference influenced his assignment. In my Supplemental Decision, I concluded that Scheiben makes “judgment calls” as to which employees work well together. And yet another leader testified that he has to consider not only

if two employees get along, but also which employees if paired up will do too much talking and not enough work. As in the case of the two types of assignments described immediately above, I find that leaders assign employees to work together by, as **Oakwood** states, forming “an opinion or evaluation by discerning and comparing data.” Here the data is the employee work personalities, and the evaluation made by the leader is who will work productively if placed together.

As the Board concluded, a decision is independent if it is made free from outside control. **Oakwood** at 9. In the instant case, I conclude that the leaders do act independently.

The record in this case demonstrates that Die Construction Department leaders generally carry out assignments free from Employer control. Rarely do Sekely supervisors interfere with, question or recommend how assignments are given in the die construction bays. Wilson testified that no superior had ever made a recommendation to him regarding assigning work to an employee, nor has he ever discussed the assignments he gives his employees with his superiors. Moreover, Wilson could not recall any instance where one of his superiors changed a work assignment he had made to an employee. As Wilson succinctly stated during direct questioning by the Hearing Officer, “I give my employees their jobs and like I say, it’s my bay, they’re my employees, that’s my prerogative.” Leader Dailey admitted that although his superiors suggested which employee to put on a job, normally this decision was left up to him. Rufener indicated that it is rare for supervisor Dave Herbert to question an assignment Rufener makes. Admitted supervisors have never questioned Gauding about why he has assigned a die to a particular employee, nor has Gauding ever had conversations with management about how he was to make assignments. The Employer does not provide the leaders with any written guidance regarding assignment of work or training apprentices and inexperienced die makers.

The die makers can affect job assignments and with whom they work, but that depends upon the particular leader. In the work bays run by Guappone, Dattilio, Dailey and Gauding, it is clear that the die makers usually have significant influence over what jobs they do. To be considered “independent,” the decision-maker must act free from the control of others, therefore these particular leaders do not make the resulting job assignments independently. However, the leaders can and sometimes do choose not to take into account employee preferences and simply assign work informed by their comparison of jobs to employee skills. The ultimate decision as to whether they will exercise the authority to assign is up to them, as demonstrated by the testimony of the more democratic leaders. Moreover, apprentices in the above four leaders’ bays appear to have little or no say in their job assignments or with whom they will work.

The less democratic leaders consider the work preferences of their employees, but they are the ultimate decision-makers. In this connection, leader Wilson estimated that about half of the employees that have worked in his bay have stated a preference about jobs. When asked by the Hearing Officer whether he considers their preferences when he goes about making assignments, Wilson answered “[s]ometimes, it’s not always possible.” On the Employer’s cross-examination, Wilson stated that he will try to accommodate employees, but that “if I need them on a particular job then that’s where I’ll put them.” Therefore these leaders can and do make job assignment decisions free from outside control.

While the Employer in its most recent brief points to the Parties' joint stipulation that the Die Construction Department leaders effectively recommend promotions, in light of my decision that they are 2(11) supervisors based on the assignments they make, I find it unnecessary to address or rely on this portion of the stipulation.

Additionally, I note that there is some limited evidence in the record that the Die Construction Department leaders can also "effectively recommend" that their crews work overtime in order to meet a ship date. However, only three leaders out of eight testified on this subject at all, and at most only two made the recommendations often enough for me to determine if management usually followed their recommendations. I find, therefore, that the record is deficient with regard to this indicia of supervisory status, and thus such status cannot be established on this basis. **Phelps Community Medical Center, 295 NLRB 486, 490 (1989).**

In light of all the testimony, I find that the Employer has met its burden of showing by a preponderance of the evidence that the Die Construction Department leaders use independent judgment when they give jobs to employees, tell apprentices and less-skilled die makers with which die maker(s) they will work, and match up multiple employees to work together on larger projects. The Die Construction Department leaders are therefore supervisors under the Act.¹²

Summary of Agree-Upon Individuals

At the reopened hearing, the Parties agreed on the inclusion or exclusion of a number of individuals. Based on the record, I have accepted the Parties' agreement. A summary of those individuals is set forth in my Supplemental Decision and Direction of Elections. In addition, and as noted in this Second Supplemental Decision, I have found that Sekely Small Machine Department leader Rich Boyle and all Sekely Die Construction Department leaders are 2(11) supervisors and thus ineligible to vote.

DIRECTION OF ELECTIONS

An election by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than twelve (12) months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than twelve (12) months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA.**

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Co.**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days from the date of this decision. **North Macon Health Care Facility**, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. If a party wishes to file a request for review electronically, guidance for E-filing can be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed. This request must be received by the Board in Washington, by **January 18, 2007**.

Dated at Cleveland, Ohio this 4th day of January, 2007.

/s/ [Frederick J. Calatrello]

Frederick J. Calatrello

Regional Director

National Labor Relations Board

Region 8